

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 435

Introduced by Senator Pavley

February 26, 2009

An act to amend ~~Section 44011~~ *Sections 44010.5, 44011, and 44012* of, and to add Section 44012.5 to, the Health and Safety Code, *and to amend Section 4000.1 of the Vehicle Code*, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 435, as amended, Pavley. Smog check program: motorcycles.

~~Existing~~

(1) Existing law establishes a motor vehicle inspection and maintenance program (smog check), administered by the Department of Consumer Affairs, that provides for the inspection of motor vehicles upon registration, biennially upon renewal of registration, upon transfer of ownership, and in certain other circumstances. Existing law exempts from biennial inspection all motorcycles until the department implements test procedures applicable to motorcycles. Violations of smog check requirements are a crime.

This bill would require the department to include *Class III* model-year 2000 and newer motorcycles in the smog check program beginning January 1, 2012.

Because violations of smog checks for motorcycles would be a crime, this bill would impose a state-mandated local program.

The bill would make various conforming, clarifying, and technical changes to the smog check program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 **SECTION 1.** *Section 44010.5 of the Health and Safety Code*
2 *is amended to read:*
3 44010.5. (a) The department shall implement a program with
4 the capacity to commence, by January 1, 1995, the testing at
5 test-only facilities, in accordance with this chapter, of 15 percent
6 of that portion of the total state vehicle fleet consisting of vehicles
7 subject to inspection each year in the biennial program and that
8 are registered in the enhanced program area, as established pursuant
9 to paragraph (1) of subdivision (a) of Section 44003.
10 (b) (1) The department shall increase the capacity of the
11 program so that the capacity exists to commence, by January 1,
12 1996, the testing at test-only facilities of that portion of the state
13 vehicle fleet that is subject to inspection and is registered in the
14 enhanced program area, which is sufficient to meet the emission
15 reduction performance standards established by the Environmental
16 Protection Agency in regulations adopted pursuant to the Clean
17 Air Act Amendments of 1990, taking into account the results of
18 the pilot demonstration program established pursuant to Section
19 44081.6.
20 (2) Upon increasing the capacity of the program pursuant to
21 paragraph (1), the department shall afford smog check stations
22 that are licensed and certified pursuant to Sections 44014 and
23 44014.2 the initial opportunity to perform the required inspections.
24 The department shall adopt, by regulation, the requirements to
25 provide that initial opportunity.
26 (3) If the department determines that there is an insufficient
27 number of licensed test-only smog check stations operating in an
28 enhanced area to meet the increased demand for test-only
29 inspections, the department may increase the capacity of the
30 program by utilizing existing contracts.
31 (c) The program shall utilize the testing procedures described
32 in Section 44012.

(d) Vehicles that are ~~not~~ *neither* diesel-powered *nor motorcycles* in the enhanced program area ~~which~~ *and that* are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 that use loaded mode dynamometers. Diesel-powered vehicles *and motorcycles* in the enhanced program area that are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 using appropriate testing procedures as determined by the department.

(e) (1) The department may implement the program established pursuant to subdivision (a) through a network of privately operated test-only facilities established pursuant to contracts to be awarded pursuant to this section.

(2) The initial contracts awarded pursuant to this section shall terminate not later than seven years from the date that the contracts were executed.

(f) No person shall be a contractor of the department for test-only facilities in all air basins, exclusively, where the enhanced program is in effect unless the department determines, after a public hearing, that there is not more than one qualified contractor. The South Coast Air Basin shall have at least two contractors, and the combined enhanced program area that includes Bakersfield, Fresno, and Sacramento shall have at least two contractors. The department may operate test-only facilities on an interim basis while contractors are being sought.

(g) (1) In awarding contracts under this section, the department shall request bids through the issuance of a request for proposal.

(2) The department shall first determine which bidders are qualified, and then award the contract to the qualified bidder, giving priority to the test cost and convenience to motorists.

(3) The department shall provide a contractual preference, as determined by the department, not to exceed 10 percent of the total proposal evaluation score, based on the following factors:

(A) Up to 5 percent to bidders providing firm commitments to employ businesses that are licensed or otherwise substantially participating in the smog check program after January 1, 1994.

(B) Up to 5 percent to bidders based on the extent to which bidders maximize the potential economic benefit of the smog check program on this state over the term of the contract. That potential economic benefit shall include the percentage of work performed

1 by California-based firms, the potential of the total project
2 workforce who will be California residents, and the percentage of
3 subcontracts that will be awarded to California-based firms.

4 (4) Any contract executed by the department for the operation
5 of a test-only facility shall expressly require compliance with this
6 chapter and any regulations adopted by the department pursuant
7 to this chapter.

8 (h) The department shall ensure that there is a sufficient number
9 of test-only facilities, and that they are properly located, to ensure
10 reasonable accessibility and convenience to all persons within an
11 enhanced program area, and that the waiting time for consumers
12 is minimized. The department may operate test-only facilities on
13 an interim basis to ensure convenience to consumers. The
14 department shall specify in the request for proposal the minimum
15 number of test-only facilities that are required for the program.
16 Any contracts initially awarded pursuant to this section shall ensure
17 that the contractors are capable of fulfilling the requirements of
18 subdivision (a).

19 (i) Any data generated at a test-only facility shall be the property
20 of the state, and shall be fully accessible to the department at any
21 time. The department may set contract specifications for the storage
22 of that data in a central data storage system or facility designated
23 by the department.

24 (j) The department shall ensure an effective transition to the
25 new program by implementing an effective public education
26 program and may specify in the request for proposal a dollar
27 amount that bidders are required to include in their bids for public
28 education activities, to be implemented pursuant to Section
29 44070.5.

30 (k) The department shall ensure the effective management of
31 the test-only facilities and shall specify in the request for proposal
32 that a manager be present during all hours of station operation.

33 (l) The department shall ensure and facilitate the effective
34 transition of employees of businesses that are licensed or otherwise
35 substantially participating in the smog check program and may
36 specify in the request for proposal that test-only facility
37 management be Automotive Service Excellence (ASE) certified,
38 or be certified by a comparable program as determined by the
39 department.

(m) As part of the contracts to be awarded pursuant to subdivision (e), the department may require contractors to perform functions previously undertaken by referee stations throughout the state, as determined by the department, at some or all of the affected stations in enhanced areas, and at additional stations outside enhanced areas only to the extent necessary to provide appropriate access to referee functions.

(n) Notwithstanding any other provision of law, to avoid delays to the program implementation timeline required by this chapter or the Clean Air Act, the Department of General Services, at the request of the department, may exempt contracts awarded pursuant to this section from existing laws, rules, resolutions, or procedures that are otherwise applicable, including, but not limited to, restrictions on awarding contracts for more than three years. The department shall identify any exemptions requested and granted pursuant to this subdivision and report thereon to the Legislature.

(o) The department shall implement the program established in this section only in urbanized areas classified by the Environmental Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm, and shall not implement the program in any other area.

(p) If existing smog check stations, in order to participate in the enhanced program, have been required to make additional investments of more than ten thousand dollars (\$10,000), the department shall submit recommendations to the Governor and the Legislature for any appropriate mitigation measures.

SECTION 4.

SEC. 2. Section 44011 of the Health and Safety Code, as added by Section 3 of Chapter 739 of the Statutes of 2007, is amended to read:

44011. (a) All motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for the following:

~~(1) All motorcycles manufactured prior to the 2000 model year.~~

(1) All motorcycles not subject to inspection pursuant to Section 44012.5.

(2) All motor vehicles that have been issued a certificate of compliance or noncompliance or a repair cost waiver upon a change

1 of ownership or initial registration in this state during the preceding
2 six months.

3 (3) All motor vehicles manufactured prior to the 1976
4 model-year.

5 (4) (A) Except as provided in subparagraph (B), all motor
6 vehicles four or less model-years old.

7 (B) Beginning January 1, 2005, all motor vehicles six or less
8 model-years old, unless the state board finds that providing an
9 exception for these vehicles will prohibit the state from meeting
10 the requirements of Section 176(c) of the federal Clean Air Act
11 (42 U.S.C. Sec. 7401 et seq.) or the state's commitments with
12 respect to the state implementation plan required by the federal
13 Clean Air Act.

14 (C) All motor vehicles excepted by this paragraph shall be
15 subject to testing and to certification requirements as determined
16 by the department, if any of the following apply:

17 (i) The department determines through remote sensing activities
18 or other means that there is a substantial probability that the vehicle
19 has a tampered emission control system or would fail for other
20 cause a smog check test as specified in Section 44012.

21 (ii) The vehicle was previously registered outside this state and
22 is undergoing initial registration in this state.

23 (iii) The vehicle is being registered as a specially constructed
24 vehicle.

25 (iv) The vehicle has been selected for testing pursuant to Section
26 44014.7 or any other provision of this chapter authorizing
27 out-of-cycle testing.

28 (D) This paragraph does not apply to diesel-powered vehicles
29 or motorcycles.

30 (5) In addition to the vehicles exempted pursuant to paragraph
31 (4), any motor vehicle or class of motor vehicles exempted pursuant
32 to subdivision (b) of Section 44024.5. It is the intent of the
33 Legislature that the department, pursuant to the authority granted
34 by this paragraph, exempt at least 15 percent of the lowest emitting
35 motor vehicles from the biennial smog check inspection.

36 (6) All motor vehicles that the department determines would
37 present prohibitive inspection or repair problems.

38 (7) Any vehicle registered to the owner of a fleet licensed
39 pursuant to Section 44020 if the vehicle is garaged exclusively

1 outside the area included in program coverage, and is not primarily
2 operated inside the area included in program coverage.

3 (8) (A) All diesel-powered vehicles manufactured prior to the
4 1998 model-year.

5 (B) All diesel-powered vehicles that have a gross vehicle weight
6 rating of 8,501 to 10,000 pounds, inclusive, until the department,
7 in consultation with the state board, pursuant to Section 44012,
8 implements test procedures applicable to these vehicles.

9 (C) All diesel-powered vehicles that have a gross vehicle weight
10 rating from 10,001 pounds to ~~13,999~~ 14,000 pounds, inclusive,
11 until the state board and the Department of Motor Vehicles
12 determine the best method for identifying these vehicles, and until
13 the department, in consultation with the state board, pursuant to
14 Section 44012, implements test procedures applicable to these
15 vehicles.

16 (D) All diesel-powered vehicles that have a gross vehicle weight
17 rating of ~~14,000~~ 14,001 pounds or greater.

18 (b) Vehicles designated for program coverage in enhanced areas
19 shall be required to obtain inspections from appropriate smog
20 check stations operating in enhanced areas.

21 (c) For purposes of subdivision (a), a collector motor vehicle,
22 as defined in Section 259 of the Vehicle Code, is exempt from
23 those portions of the test required by subdivision (f) of Section
24 44012 if the collector motor vehicle meets all of the following
25 criteria:

26 (1) Submission of proof that the motor vehicle is insured as a
27 collector motor vehicle, as shall be required by regulation of the
28 bureau.

29 (2) The motor vehicle is at least 35 model-years old.

30 (3) The motor vehicle complies with the exhaust emissions
31 standards for that motor vehicle's class and model-year as
32 prescribed by the department, and the motor vehicle passes a
33 functional inspection of the fuel cap and a visual inspection for
34 liquid fuel leaks.

35 *SEC. 3. Section 44012 of the Health and Safety Code, as added*
36 *by Section 5 of Chapter 739 of the Statutes of 2007, is amended*
37 *to read:*

38 44012. The test at the smog check stations shall be performed
39 in accordance with procedures prescribed by the department,
40 pursuant to Section 44013, and shall require, at a minimum, for

1 all vehicles that are ~~not~~ *neither* diesel-powered *nor motorcycles*,
2 loaded mode dynamometer testing in enhanced areas, and
3 two-speed testing in all other program areas. The department shall
4 ensure all of the following:

5 (a) Emission control systems required by state and federal law
6 are reducing excess emissions in accordance with the standards
7 adopted pursuant to subdivisions (a) and (c) of Section 44013.

8 (b) Motor vehicles are preconditioned to ensure representative
9 and stabilized operation of the vehicle's emission control system.

10 (c) For other than diesel-powered vehicles, the vehicle's exhaust
11 emissions of hydrocarbons, carbon monoxide, carbon dioxide, and
12 oxides of nitrogen in an idle mode or loaded mode are tested in
13 accordance with procedures prescribed by the department. In
14 determining how loaded mode and evaporative emissions testing
15 shall be conducted, the department shall ensure that the emission
16 reduction targets for the enhanced program are met.

17 (d) For other than diesel-powered vehicles, the vehicle's fuel
18 evaporative system and crankcase ventilation system are tested to
19 reduce any nonexhaust sources of volatile organic compound
20 emissions, in accordance with procedures prescribed by the
21 department.

22 (e) For diesel-powered vehicles, a visual inspection is made of
23 emission control devices and the vehicle's exhaust emissions are
24 tested in accordance with procedures prescribed by the department,
25 that may include, but are not limited to, on-board diagnostic testing.
26 The test may include testing of emissions of any or all of the
27 pollutants specified in subdivision (c) and, upon the adoption of
28 applicable standards, measurement of emissions of smoke or
29 particulates, or both.

30 (f) A visual or functional check is made of emission control
31 devices specified by the department, including the catalytic
32 converter in those instances in which the department determines
33 it to be necessary to meet the findings of Section 44001. The visual
34 or functional check shall be performed in accordance with
35 procedures prescribed by the department.

36 (g) A determination as to whether the motor vehicle complies
37 with the emission standards for that vehicle's class and model-year
38 as prescribed by the department.

39 (h) The test procedures may authorize smog check stations to
40 refuse the testing of a vehicle that would be unsafe to test, or that

1 cannot physically be inspected, as specified by the department by
2 regulation. The refusal to test a vehicle for those reasons shall not
3 excuse or exempt the vehicle from compliance with all applicable
4 requirements of this chapter.

5 ~~(i) This section shall become operative on January 1, 2010.~~

6 ~~SEC. 2.~~

7 SEC. 4. Section 44012.5 is added to the Health and Safety
8 Code, to read:

9 44012.5. (a) Beginning January 1, 2012, the department shall
10 include model-year 2000 and newer *Class III* motorcycles,
11 registered for on-road use in California, in the inspection and
12 maintenance program established pursuant to this chapter. The
13 department, in cooperation with the state board, shall adopt
14 regulations to implement this section, including prescribing test
15 procedures for motorcycles, by July 1, 2011.

16 (b) *Motorcycles subject to testing under this section shall be*
17 *inspected using appropriate procedures as determined by the*
18 *department in consultation with the state board.*

19 (c) *As used in this section, "Class III motorcycle" means a*
20 *motorcycle containing an engine with a displacement of 280 cubic*
21 *centimeters or greater.*

22 SEC. 5. Section 4000.1 of the Vehicle Code is amended to read:

23 4000.1. (a) Except as otherwise provided in subdivision (b),
24 (c), or (d) of this section, or subdivision (b) of Section 43654 of
25 the Health and Safety Code, the department shall require upon
26 initial registration, and upon transfer of ownership and registration,
27 of any motor vehicle subject to Part 5 (commencing with Section
28 43000) of Division 26 of the Health and Safety Code, a valid
29 certificate of compliance or a certificate of noncompliance, as
30 appropriate, issued in accordance with Section 44015 of the Health
31 and Safety Code.

32 (b) With respect to new motor vehicles certified pursuant to
33 Chapter 2 (commencing with Section 43100) of Part 5 of Division
34 26 of the Health and Safety Code, the department shall accept a
35 statement completed pursuant to subdivision (b) of Section 24007
36 in lieu of the certificate of compliance.

37 (c) For purposes of determining the validity of a certificate of
38 compliance or noncompliance submitted in compliance with the
39 requirements of this section, the definitions of new and used motor

1 vehicle contained in Chapter 2 (commencing with Section 39010)
2 of Part 1 of Division 26 of the Health and Safety Code shall control.

3 (d) Subdivision (a) does not apply to a transfer of ownership
4 and registration under any of the following circumstances:

5 (1) The initial application for transfer is submitted within the
6 90-day validity period of a smog certificate as specified in Section
7 44015 of the Health and Safety Code.

8 (2) The transferor is the parent, grandparent, sibling, child,
9 grandchild, or spouse of the transferee.

10 (3) A motor vehicle registered to a sole proprietorship is
11 transferred to the proprietor as owner.

12 (4) The transfer is between companies the principal business of
13 which is leasing motor vehicles, if there is no change in the lessee
14 or operator of the motor vehicle or between the lessor and the
15 person who has been, for at least one year, the lessee's operator
16 of the motor vehicle.

17 (5) The transfer is between the lessor and lessee of the motor
18 vehicle, if there is no change in the lessee or operator of the motor
19 vehicle.

20 (6) The motor vehicle was manufactured prior to the 1976
21 model-year.

22 (7) ~~Beginning January 1, 2005, the~~ The transfer is for a motor
23 vehicle ~~that is~~ four or less model-years old ~~that is neither~~
24 ~~diesel-powered nor a motorcycle.~~ The department shall impose a
25 fee of eight dollars (\$8) on the transferee of a motor vehicle ~~that~~
26 ~~is four or less model-years old that is exempt from subdivision (a)~~
27 ~~pursuant to this paragraph.~~ Revenues generated from the
28 imposition of that fee shall be deposited into the Vehicle Inspection
29 and Repair Fund.

30 (e) The State Air Resources Board, under Part 5 (commencing
31 with Section 43000) of Division 26 of the Health and Safety Code,
32 may exempt designated classifications of motor vehicles from
33 subdivision (a) as it deems necessary, and shall notify the
34 department of that action.

35 (f) Subdivision (a) does not apply to a motor vehicle when an
36 additional individual is added as a registered owner of the motor
37 vehicle.

38 (g) For purposes of subdivision (a), any collector motor vehicle,
39 as defined in Section 259, is exempt from those portions of the
40 test required by subdivision (f) of Section 44012 of the Health and

1 Safety Code, if the collector motor vehicle meets all of the
2 following criteria:

3 (1) Submission of proof that the motor vehicle is insured as a
4 collector motor vehicle, as shall be required by regulation of the
5 ~~bureau~~ *Bureau of Automotive Repair*.

6 (2) The motor vehicle is at least 35 model-years old.

7 (3) The motor vehicle complies with the exhaust emissions
8 standards for that motor vehicle's class and model year as
9 prescribed by the ~~department~~ *Department of Consumer Affairs*,
10 and the motor vehicle passes a functional inspection of the fuel
11 cap and a visual inspection for liquid fuel leaks.

12 ~~SEC. 3.~~

13 *SEC. 6.* No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.